EXHIBIT 77

Oklahoma City, OK

		Page 1			
THE UNITED STATES DISTRIC	CT COURT				
FOR THE DISTRICT OF MASSACHUSETTS					
	-X				
In Re: PHARMACEUTICAL INDUSTRY) MDL No. 1456				
AVERAGE WHOLESALE PRICE LITIGATION) Master File No.				
	-) 01-CV-12257-PBS				
THIS DOCUMENT RELATES TO:)				
United States of America ex rel.) Hon. Patti B.				
Ven-A-Care of the Florida Keys,) Saris				
Inc., et al., v. Dey, Inc., et al.,)				
Civil Action No. 05-11084-PBS;)				
and United States of America ex) DEPOSITION OF				
rel. Ven-A-Care of the Florida) THE OKLAHOMA				
Keys, Inc., et al., v. Boehringer) HEALTH CARE				
Ingelheim Corp., et al., Civil) AUTHORITY				
Action No. 07-10248-PBS;) by NANCY				
and United States ex rel. Ven-A-Care	e) NESSER				
of the Florida Keys v. Abbott)				
Laboratories, Inc., Civil Action) DECEMBER 12,				
Nos. 06-CV-11337 and 07-CV-11618) 2008				
	-X				

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OK Health Care Authority (Nancy Nesser)

December 12, 2008

Oklahoma City, OK

Page 54 Page 56 just thinking about acquisition. no benefit to getting one over the other. Q. Okay. When did you first become aware 2 2 Q. While you were working at any of the 3 pharmacies prior to working for Oklahoma 3 of the difference between AWP and actual 4 acquisition costs for generic drugs? 4 Medicaid, were you aware of anyone marketing the 5 5 A. That probably would have been later spread? 6 6 than that. I mean, not all the way to '99, but A. I think I -- I remember being sort of 7 maybe '95, '96, somewhere in there. 7 told, not exactly, but -- that was pointed out to 8 Q. And in '95, '96 what was your 8 me. Not by a sales person, but by my boss. Q. Okay. And what was pointed out to you 9 understanding of the difference between AWP and 9 by your boss, exactly? actual acquisition costs for generic drugs? 10 10 A. That sometimes there was a wide 11 A. Just that -- just that -- that certain 11 12 difference. Not always. 12 -- certain generics had this lower price and that 13 Q. Can you describe what you mean by "wide we've got paid -- not necessarily based on AWP, 13 difference"? 14 but we would get paid based on a maximum 15 A. Just that it was -- it was variable. 15 allowable cost. And so you -- you wanted to find 16 It wasn't a standard. It wasn't, like, with the the least expensive one because payors were brand name where you could -- you can see it's 17 starting to put in maximum allowable cost 17 programs. And so you wanted to make sure you 18 consistent. If you pulled two manufacturers 18 19 brand-name products off the shelf, the markup is 19 were getting the best deal. Q. Was it ever discussed, not just in 20 going to be about the same. If you pulled two --20 21 relation to maximum allowable costs, but in 21 even of the same generic drug, the -- there's no consistency between the AWP and the acquisition. 22 relation to the difference between the price at Page 55 Page 57 1 Q. So is it your understanding that there 1 which you could acquire drugs and the AWP-based 2 was no particular formula or specified markup 2 reimbursement? between AWP and actual acquisition costs for 3 A. I don't remember that specifically. generic drugs starting in, you know, around 1995? 4 Q. Okay. I would like to start with a 5 A. That would -- that would be a fair 5 picture of how the Medicaid program works in 6 statement, yes. Oklahoma. 7 7 Q. Okay. You mentioned earlier that -- at A. Okay. least with reference to the brand drugs, you 8 Q. And in the federal government. might, in purchasing drugs, consider the gap 9 Medicaid in generally is partnership between the 9 between the AWP and the actual acquisition cost. federal government and the state governments; 10 10 11 Did you choose who to buy your prescription drugs 11 correct? 12 from based on that spread between AWP and actual 12 A. Correct. 13 13 acquisition costs? Q. Are you familiar with the term federal A. Not typically. You know, there were a 14 14 matching assistance percentage? few products where -- for example, I'm not going 15 15 A. Yes. to be able to -- Prinivil and Zestril were both 16 16 Q. What is federal matching assistance Lisinopril made by two different companies. But 17 17 percentage? they typically were priced almost to the penny 18 A. That is the amount that the federal 18

15 (Pages 54 to 57)

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program.

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the same.

So when there were brand drugs where

you had two manufacturers, they seemed like they

would just price them pretty close. So there's

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government contributes to a state's Medicaid

a part of Oklahoma's expenditures under its

Q. Essentially the federal government pays

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Page 74 Page 76 We'll come back to it shortly. I'm handing you A. Yes. 1 what has been marked Roxane Oklahoma Exhibit 4, 2 Q. Under state plan amendment 90-4 which is Bates labeled HHC 010-0685. Do you effective March 1st, 1990, Oklahoma reimbursed 3 3 recognize this document? prescription drugs for a dispensing fee at an 5 A. No. I've never seen this document 5 amount charged by the provider, but with a maximum of \$5.10; correct? 6 6 before. 7 7 A. That does seem to be what it says, yes. Q. This is the Oklahoma state plan amendment 90-4 submitted by Oklahoma on March Q. Do you have any reason to believe 8 8 26th, 1990 to HCFA; correct? 9 that's not the case? 9 A. That is what the document says, yes. 10 A. No. 10 Q. Do you have any reason to believe 11 (Exhibit Roxane-OK 006 marked.) 11 that's not the case? 12 12 Q. I'm handing you what has been marked 13 A. No, I do not. 13 Roxane Oklahoma Exhibit 6 Bates labeled HHC 010-0674. Do you recognize this document? 14 Q. State plan amendment 90-4 by Oklahoma 14 A. I don't believe I've ever seen this 15 Medicaid was approved by HCFA on February 1st, 15 1991; correct? 16 document. 16 17 A. Again, that's what it's showing here. 17 O. This document is the Oklahoma state Q. Do you have any reason to believe plan amendment 95-19 submitted by Oklahoma to 18 18 HCFA on November 14th, 1995; correct? 19 that's not the case? 19 A. No. 20 A. Yes. 20 21 Q. The state plan amendment by Oklahoma 21 Q. Oklahoma state plan amendment 95-19 was for 90-4 had an effective date of March 1st, 22 approved by HCFA on May 2nd, 1996? Page 75 Page 77 1990; correct? 1 A. Yes. 1 2 2 Q. State plan amendment 95-19 had an A. Right. 3 (Exhibit Roxane-OK 005 marked.) 3 effective date of October 1st, 1995? 4 4 Q. I'm handing you what has been marked A. Yes. 5 Roxane Oklahoma Exhibit 5 Bates labeled HHC 010-5 Q. The subject of this Oklahoma state plan 0687 to HHC 010-0688. Do you recognize this amendment 95-19 was "dispensing fee"? 6 7 7 document? A. Yes. 8 8 A. No. I've never seen this document. Q. Are you aware that state plan amendment 9 9 95-19 reduced the dispensing fee to \$4.15? O. This document is a letter from Oklahoma Medicaid to HCFA on January 24th, 1991 regarding A. I don't see that reflected on this 10 10 state plan amendment 90-4 that we just reviewed; 11 11 page. 12 correct? 12 Q. Are you aware that state plan amendment A. Yes. 95-19 reduced dispensing fee to \$4.15? 13 13 A. I was not aware that it was reduced by 14 Q. Please, read paragraph 1 to yourself. 14 15 A. Okav. 15 this state plan number, no. Q. Under state plan amendment 90-4 Q. Were you aware that in October, 1995 16 16 effective March 1st, 1990, Oklahoma reimbursed Oklahoma Medicaid reduced its dispensing fee to 17 17 18 prescription drugs for the ingredient cost at the 18 \$4.15? lower of estimated cost defined as AWP minus 10.5 19 A. I was aware that in the year 1995 that 20 percent, the federal upper limit, the state it was reduced to \$4.15. 21 maximum allowable cost or the usual and customary 21 Q. Is it consistent with your 22 charge? 22 understanding that this state plan amendment

20 (Pages 74 to 77)

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December 12, 2008

Oklahoma City, OK

	Page 170		Page 172
1	THE WITNESS: I don't believe I have	1	and the \$5.10 dispensing fee implemented in 1990
2	the the facts necessarily in front of me to	2	were both below the two averages of dispensing
3	definitely state that the profit component was	3	costs that Myers & Stauffer reported in 1989;
4	considered separately or exactly what the	4	correct?
5	consideration was.	5	A. Correct.
6	Q. (BY MS. LIEBERMAN) But your	6	Q. Oklahoma Medicaid, then, was aware that
7	understanding is that a reasonable profit was	7	the dispensing fees that it implemented were
8	some consideration, even if you don't know what	8	below the reported average costs of dispensing
9	consideration or what component; correct?	9	fees; correct?
10	A. Well, it's at least a consideration of	10	A. Correct.
11	Mr. Stauffer. As for the state, I don't see I	11	Q. As we discussed earlier, prior to 1989,
12	don't know that there's a discussion of of the	12	the dispensing fee was \$3.55; correct?
13		13	
14	state's consideration of the profit component. Q. The state did hire Myers & Stauffer,	$\frac{13}{14}$	A. I think that's right, yes.Q. Then it increased to \$4.83 for an
15	•	15	`
16	though, to conduct this survey; correct? A. Correct. But the state doesn't always	16	interim period; correct? A. Correct.
	•	17	
17 18	agree 100 percent with any report, even though	18	Q. Then it increased to \$5.10 in 1990;
	they may have hired someone.	19	correct?
19	Q. Okay. If you turn to page HHD 0227.		A. Correct.
20	If you first turn to page HHD 048-0183. You'll	20	Q. And then Oklahoma Medicaid decreased
21	see that this is a the report prepared by	21 22	the dispensing fee to \$4.15; correct?
22	Myers & Stauffer for Oklahoma Medicaid in 1989?	22	A. Correct.
	Page 171		Page 173
			5
1	A. Okay.	1	Q. Why did Oklahoma Medicaid decrease its
1 2	Q. And the and submitted by Oklahoma	1 2	
	Q. And the and submitted by Oklahoma Medicaid in its brief.		Q. Why did Oklahoma Medicaid decrease its dispensing fee to \$4.15? A. I don't have any knowledge of that.
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